

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMERGENCY CARE RESEARCH	:	CIVIL ACTION
INSTITUTE	:	
v.	:	
	:	
GUIDANT CORPORATION,	:	
et al.,	:	NO. 06-1898

MEMORANDUM

Bartle, C.J.

July 5, 2006

On May 4, 2006, plaintiff Emergency Care Research Institute ("ECRI") filed this action against defendant Guidant Corporation pursuant to our diversity jurisdiction. Plaintiff seeks a declaratory judgment that it is not tortiously interfering with defendants' contracts or contractual relations with certain third parties.

On May 11, 2006, three days after service of process occurred, two Guidant subsidiaries, Cardiac Pacemakers, Inc. ("CPI") and Guidant Sales Corporation ("GSC"), instituted suit against ECRI in the United States District Court for the District of Minnesota, captioned Cardiac Pacemakers, Inc. and Guidant Sales Corporation v. ECRI, Civ. A. No. 06-1747 (the "Minnesota action"). In an amended complaint filed in this court on May 16, 2006, ECRI added CPI and GSC as defendants. In their answer, defendants (collectively "Guidant") assert as counterclaims the same claim contained in their complaint in the Minnesota action as well as a claim for misappropriation of trade secrets under

Pennsylvania law. Thus, there is no dispute that the Minnesota action and the instant action involve the same underlying conflict between the parties.

Now before the court are: (1) the motion of plaintiff to "Enjoin the Prosecution of a Duplicative Subsequent Action" and (2) the motion of defendants to transfer this action to the District of Minnesota pursuant to 28 U.S.C. § 1404(a). The parties have stipulated to a stay of the Minnesota action pending the resolution of these pending motions.

I.

According to the pleadings, plaintiff ECRI is a Pennsylvania non-profit corporation with its principal place of business in Plymouth Meeting, Pennsylvania. Plaintiff describes itself as a health services research agency that provides various publications and programs for healthcare providers and professionals. Defendants Guidant Corporation and GSC are both incorporated under Indiana law and maintain their principal places of business in Indianapolis, Indiana. CPI is incorporated under Minnesota law and maintains its principal place of business in St. Paul, Minnesota. GSC is a wholly owned subsidiary of CPI, which is itself a wholly owned subsidiary of Guidant Corporation.

CPI manufactures cardiac rhythm management devices ("CRMs"), including pacemakers and defibrillators, that Guidant sells in Pennsylvania and throughout the United States. According to Guidant, it negotiates individualized sales

contracts with each of its hospital and healthcare customers, such that different customers pay different prices for the same goods. As a result of this non-standardized pricing system, apparently all Guidant sales contracts include a confidentiality provision prohibiting its CRMs customers from disclosing the terms of their respective contracts.

Since 1996, plaintiff has provided a service called "PriceGuide," which consists of a searchable database of the actual prices paid for a wide range of different medical products throughout the country. Approximately 430 different hospitals, health systems, manufacturers, and government agencies, among others, subscribe to PriceGuide. Thus, they pay for the right to search the database and obtain information about what prices are being charged to other purchasers of the same and competing items. There is no dispute that some Guidant customers, despite their confidentiality agreements with Guidant, have provided ECRI with specific purchase price information which plaintiff has included in the PriceGuide database. The availability on PriceGuide of price information about these CPI-manufactured CRMs is at the center of the dispute between the parties.

Plaintiff alleges that in May 2004 defendants first objected to ECRI's publication of Guidant contract prices in PriceGuide. Preliminary negotiations between the parties to resolve the disputed publication of Guidant prices did not bare fruit. At around that same time, CPI and GSC filed suit in the United States District Court for the District of Minnesota

against an unrelated party, Aspen Healthcare Metrics ("Aspen"). See Cardiac Pacemakers, Inc. & Guidant Sales Corp. v. Aspen II Holding Co., Civ. A. No. 04-4048. CPI and GSC alleged that Aspen, a healthcare consulting firm, was collecting non-public pricing information from existing Guidant contracts that it then used to assist its own clients in negotiating more favorable terms with Guidant for future CRM contracts. CPI and GSC asserted four causes of action against Aspen: (1) tortious interference with confidentiality agreements; (2) tortious interference with contracts; (3) tortious interference with prospective contractual relations; and (4) misappropriation of trade secrets. ECRI was not a party to the Aspen action.

While the Aspen litigation was still pending, the discussions between ECRI and Guidant continued and Guidant's counsel sent ECRI a cease-and-desist letter in November 2005. Shortly thereafter, in February 2006, the District Court hearing the Aspen case granted partial summary judgment in favor of Guidant on the issue of whether Aspen tortiously interfered with Guidant's confidentiality agreements. See Cardiac Pacemakers, Inc. v. Aspen II Holding Co., 413 F. Supp. 2d 1016 (D. Minn. 2006). The Court determined that Aspen had intentionally procured the breach of Guidant confidentiality agreements and that Aspen failed to sustain its burden of asserting any valid legal justification for such conduct. Id. at 1024-26. In March 2006, Aspen and Guidant apparently reached a settlement of the lawsuit, thereby closing the matter. Around that time, also in

March 2006, Guidant sent ECRI a copy of the Aspen opinion along with a repeated cease-and-desist demand. It does not appear the parties engaged in any further negotiations at that point prior to the filing of ECRI's complaint in this court on May 4, 2006.

As noted above, ECRI seeks a declaration from this court that it has not engaged in tortious interference with Guidant's contracts or contractual relations with third parties by publishing PriceGuide. Defendants assert counterclaims for (1) tortious interference with the contracts between Guidant and its pacemaker customers and (2) misappropriation of trade secrets.

II.

We will address first defendants' motion to transfer pursuant to 28 U.S.C. § 1404(a). That section provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." See 28 U.S.C. § 1404(a). While we have the discretion to transfer a case, the party requesting a transfer under this section has the burden of establishing that transfer is warranted. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). In Jumara, our Court of Appeals identified a number of private and public interests to be considered in deciding whether to effect a transfer. These factors include: (1) the plaintiff's choice of forum; (2) the defendant's choice of forum; (3) where the claims

arose; (4) "convenience of the parties as indicated by their relative physical and financial conditions"; (5) "the convenience of the witnesses-but only to the extent that the witnesses may actually be unavailable for trial in one of the fora"; (6) the location of books and records; (7) the enforceability of the judgment; (8) practical considerations that could expedite or simplify trial; (9) the level of court congestion in the two fora; (10) "the local interest in deciding local controversies at home"; (11) the public policies of the fora; and (12) in a diversity case, the familiarity of the two courts with state law. See Jumara, 55 F.3d at 879-80.

The gravamen of defendants' argument is that plaintiff filed its complaint preemptively in an effort to avoid being sued in the District of Minnesota. According to defendants, this alleged forum shopping effort was the result of the recent Aspen ruling favorable to Guidant. While not specifically addressing the Jumara factors, defendants contend that we should transfer the action (1) as a matter of judicial economy, (2) for the convenience of defendants, and (3) in the interests of justice to sanction ECRI's alleged forum-shopping.

In response, ECRI argues that it has not, in fact, forum-shopped, since it has filed suit in its home venue, the Eastern District of Pennsylvania. It further contends that the "first-filed rule" weighs against transfer and that the balance of conveniences favors litigating the dispute in this court.

Applying the relevant Jumara factors to the instant dispute, we find that defendants have failed to show that a transfer is warranted. In balancing the first two factors, the plaintiff's and defendants' preferred choices, "the plaintiff's choice of venue should not be lightly disturbed." Jumara, 55 F.3d at 879 (internal quotations and citations omitted). When the plaintiff files suit in its home forum, as is the case here, that choice is entitled to considerable deference. See, e.g., Piper Aircraft Company v. Reyno, 454 U.S. 235, 255 (1981). Defendants claim that Minnesota is the more convenient forum because "nearly all Guidant employees reside" there and certain third party witnesses are located there. They give no specific reasons, however, why they would be inconvenienced by litigating this case here, in a District where, we take judicial notice, Guidant frequently appears. See, e.g., Guss v. Guidant Corp., Civ. A. No. 03-4630; Brennan v. Endovascular Technologies, Inc., Civ. A. No. 04-1154. While we are mindful of defendants' contention that their preference should be entitled to greater weight than normal as the so-called "natural plaintiff" to the action, this fact alone is insufficient in our view to disturb ECRI's choice.

Weighing the third Jumara factor, it appears the claims at issue have a far greater connection to Pennsylvania than to Minnesota. Plaintiff seeks a declaratory judgment regarding the validity of its regular business activity in this District, where it maintains its offices and PriceGuide database records. None

of plaintiff's allegedly tortious acts occurred in Minnesota, and defendants do not allege that plaintiff interfered with any of its contracts with Minnesota-based purchasers of CRMs. Under the twelfth Jumara factor, we must consider the familiarity of the two courts with the relevant state law. Defendants' misappropriation of trade secrets counterclaim is brought under the Pennsylvania Uniform Trade Secret Act. See 12 Pa. Con. Stat. Ann. §§ 5301-5308. This further favors resolution of the claim in this District rather than the District of Minnesota.

In analyzing the fourth Jumara factor, the "convenience of the parties as indicated by their relative physical and financial conditions," we note that plaintiff is a non-profit corporation located within this District while defendants comprise a national corporation located in both Indiana and Minnesota. As noted above, Guidant and its various subsidiaries are frequently involved in litigation in this district.

Pursuant to the fifth Jumara factor, there is no evidence that witnesses at trial would be unavailable in one district over another. Under the sixth factor, it appears that most of the books and records relevant to the dispute are located at plaintiff's offices in Plymouth Meeting, Pennsylvania. It is at those offices where plaintiff receives the prices sent to it by Guidant purchasers across the country as well as where it maintains its PriceGuide database. Finally, we find that none of the remaining Jumara factors is relevant to the pending motion to transfer. There is no evidence in the record regarding the

enforceability of any judgment, any considerations that may expedite trial, congestion of the courts, specific local interests or other public policies that can be said to favor one District over the other.

On balance, we find the Jumara factors weigh heavily toward this court's retention of the action and will deny the motion to transfer under 28 U.S.C. § 1404(a).

III.

Resolution of the motion of plaintiff to enjoin defendants from proceeding with the Minnesota Action centers on our Court of Appeal's recognition of the "first-filed rule." This rule gives a district court "'the power' to enjoin the subsequent prosecution of proceedings involving the same parties and the same issues already before another district court." EEOC v. Univ. of Pa., 850 F.2d 969, 971-72 (3d Cir. 1988). The rule "encourages sound judicial administration and promotes comity among federal courts of equal rank." Id. at 971.

Defendants counter that ECRI filed its complaint in this action preemptively and that under the circumstances presented here its first-filed status should be accorded no weight. Defendants, just as in their motion to transfer, seek an order from the court transferring this case to Minnesota for consolidation with their pending lawsuit.

In EEOC, our Court of Appeals explained that "Courts must be presented with exceptional circumstances before

exercising their discretion to depart from the first-filed rule." See 850 F.2d at 879. Such circumstances generally require some inequitable conduct such as bad faith negotiating or blatant forum shopping. The Court of Appeals affirmed the district court's finding of exceptional circumstances where the University of Pennsylvania preemptively filed suit outside its home district in order to avoid a recent decision of the Court of Appeals adverse to its position. Id. at 973. In addition, the University instituted suit in what it thought to be a more friendly forum just three days before the expiration of a grace-period, at the end of which the University was told it would be sued in its home district. Id. Finding that the University's conduct evidenced "exceptional circumstances," the Court determined the first-filed rule should not apply "when at least one of the filing party's motives is to circumvent local law and preempt an imminent subpoena enforcement action." Id. at 978.

The question before the court centers on whether the "exceptional circumstances" outlined in EEOC are present here. Of critical importance to the court in EEOC was the fact that the University had sued outside its home district in order to avoid what it admitted was a harmful Third Circuit precedent. In complete contrast, here, plaintiff filed its complaint in its home district. ECRI's conduct hardly rises to the level of forum shopping.

Other courts in this circuit have found evidence of bad faith when the parties are involved in settlement negotiations,

one party lays out a deadline by which they will initiate litigation should settlement not be reached, and just prior to that deadline, the other party preemptively files a declaratory judgment action. See, e.g., FMC Corp. v. AMVAC Chemical Corp., 379 F. Supp. 2d 733, 744 (E.D. Pa. 2005), Drugstore-Direct, Inc. v. Cartier Div., 350 F. Supp. 2d 620, 623 (E.D. Pa. 2004); see also EEOC, 850 F.2d at 977. Here, there is no evidence that plaintiff and defendants engaged in settlement negotiations in the last two months leading up to plaintiff's filing of this complaint on May 4, 2006. The record does not demonstrate that defendants ever notified plaintiff that their action against plaintiff was imminent. We reject defendants' contention that plaintiff somehow acted in bad faith by filing its complaint before defendants did so. Plaintiff was under no obligation to provide defendants with "advance warning" of its lawsuit, as defendants contend in their response to the motion, and unlike EEOC, there was no expiring grace period at the end of which defendants threatened initiation of their own lawsuit. Quite simply, there is nothing "exceptional" at all about the present circumstances.

Accordingly, the motion of ECRI to enjoin defendants from prosecuting the second-filed Minnesota action will be granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMERGENCY CARE RESEARCH	:	CIVIL ACTION
INSTITUTE	:	
v.	:	
	:	
GUIDANT CORPORATION,	:	
et al.,	:	NO. 06-1898

ORDER

AND NOW, this 5th day of July, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of defendants to transfer this action to the District of Minnesota pursuant to 28 U.S.C. § 1404(a) is DENIED;

(2) the motion of plaintiff to "Enjoin the Prosecution of a Duplicative Subsequent Action" is GRANTED; and

(3) defendants Guidant Corporation, Guidant Sales Corporation, and Cardiac Pacemakers, Inc., and their officers, agents, servants, employees, attorneys and all those in active concert or participation with them, are hereby ENJOINED from prosecuting the action captioned Cardiac Pacemakers, Inc. & Guidant Sales Corporation v. ECRI, Civ. A. No. 06-1747, now pending in the United States District Court for the District of Minnesota.

BY THE COURT:

/s/ Harvey Bartle III

C.J.